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CHURCHWARDENS'
MANUAL.

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CHURCHWARDENS' MANUAL.

THE
CHURCHWARDEN'S
MANUAL,

OR

A GUIDE TO THE ORDINARY DUTIES
OF A CHURCHWARDEN.

A NEW AND ENLARGED EDITION.



SIMPKIN, MARSHALL, & Co., STATIONERS'-HALL COURT.
LANCASTER: C. BARWICK, MARKET-STREET.

—
M.DCCC.XLVII.

TO THE
Churchwardens and Chapelwardens
OF THE
LANCASTER
NORTH AND SOUTH DECANAL DISTRICTS,
THIS WORK

(PUBLISHED FOR THEIR SPECIAL USE)

IS INSCRIBED, WITH GREAT RESPECT,

BY

THEIR OBEDIENT SERVANT,

THOS. MACKRETH.

PREFACE

TO THE SECOND EDITION.

ALL the copies of the first impression of this little work have, long since, been disposed of : and my publishers have frequently reminded me that a second edition was much wanted ;— I deferred, however, preparing it as long as the Braintree church-rate case was pending. Judgment has now been given in that important case ; and will be found embodied in this edition, in its proper place.

*Rectory, Halton, Lancaster,
February 1847.*

PREFACE

TO THE FIRST EDITION.

SINCE my appointment to the office of Rural Dean in this district, frequent complaints have been made to me, by churchwardens, of individuals who have refused to pay their church-rates ; and my advice has been asked how they were to proceed to compel these refractory parties to pay them. Upon enquiry into the causes which have led to these complaints and difficulties, I have almost invariably found that the church-rates had been made with such an entire disregard of all the necessary forms as would render any attempts to enforce them quite useless. In justice to these churchwardens, I ought

to add that I have observed no disinclination or supineness, in discharging the duties of their office, but only a want of knowledge of the proper mode of doing it—especially in those more important parts which relate to the levying of church-rates and the disposal of church-sittings. It was a desire to supply this want of information which first suggested the following treatise : and it is now offered in a plain and easy form, in the hope that it may in some degree answer the end proposed ; and may also, perhaps, prevent some of those differences and contentions, among neighbours, which, in not a few instances, have arisen, I would gladly believe, from no worse a motive than a sort of determination not to submit any longer to that loose and irregular way in which, for a number of years, it has been the custom, in many places, for church-rates to be levied.

All references and authorities, as well as all points which might give rise to perplexity and difficulty, have, it will be seen, been omitted in this work, as adding only to its expence without materially increasing its usefulness.

*Rectory, Halton, Lancaster,
February 1842.*

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INSTRUCTIONS FOR CHURCHWARDENS.

CHAPTER I.

On the Office, Appointment, and Admission of Churchwardens.

CHURCHWARDENS are the ecclesiastical officers and legal representatives of the parish, and their duty is to see that due reverence and decorum be observed in the church and churchyard during the time of divine service and on all other occasions: they have also the custody and protection of the church and the fences of the churchyard; and are, from time to time, to restore and repair such parts of them as shew any failure or decay. They are, further, entrusted with the care of the church goods, and are so to manage them as may be best for the advantage of the parishioners; and, to this end, may purchase them for their use and benefit,

and may sue and be sued in respect of them, as a corporation. They are also to provide, at the expence of the parish, all such things as may be necessary for the decent celebration of the various services of the church, and the due administration of the sacraments. In all these matters, they are themselves the sole judges of what is proper ; being invested for this purpose with the authority of the ordinary, and the trust of the parishioners, upon their admission to the office : but it is very desirable, for the peace of the parish, that they enter upon no expensive repairs without first taking the advice of those who have to pay for them.

WHO MAY BE APPOINTED TO THE OFFICE.

All RESIDENT inhabitants of the parish are liable to serve the office of Churchwarden ; except aliens, Romanists, Jews, and persons convicted of felony,—these are disqualified. There are others who, though not actually disqualified, are yet, by law, exempt from serving this office, unless they are content voluntarily to bear it : such as peers of the realm, clergymen, members of parliament, counsellors and attorneys, practising physicians, members of the College of surgeons and apothecaries ; sergeants,

corporals, drummers and privates, in the militia while enrolled ; registrars of births &c ; acting justices of the peace ; officers of customs and excise ; and clerks while employed as such. Officers and servants appointed by the Postmaster General are supposed to be entitled to exemption ; sheriffs, aldermen of a city, have likewise been held exempt, and the right of a mayor of a borough and of town councillors to be exempt would seem to follow from the same reason. Also all preachers and teachers of dissenting congregations, if duly qualified according to law, and all other dissenters may claim exemption from serving this office, if their tenets, doctrines, and habits are such that they cannot conscientiously discharge its duties ; but the Courts look closely into exemptions claimed on such accounts, and will not readily allow any assumption of a religious scruple as an excuse for discharging a legal obligation. Churchwardens, however, ought invariably to be members of the Established Church : and they are now required by law to be so, in a chapel of ease formed into a distinct parish under the 1st and 2nd W. IV. c. 38 s. 25 ; and also in all parishes formed under the 6 and 7 Vict. c. 37 s. 17.

The parishioners can excuse the person first chosen and proceed to the election of another in his stead.

And, here, let it be observed how desirable it is that the parishioners should exercise a proper discretion in the choice of churchwardens.* The office is one of great usefulness; and is every day becoming one of more weight and importance: it is honourable, too, above many that are merely secular, for no less a charge is entrusted to it than the house of God. Surely, then, there is a dignity and a sacred interest in such an office of which no man, in whatever station, needs to be ashamed.

HOW CHOSEN AND ADMITTED.

The Canon (90) requires that churchwardens be elected yearly in Easter Week: this, however, is only directory; an election at any other

* It is absolutely necessary that Churchwardens should be able to read and write; and yet these low qualifications are not always possessed. I have known instances of proceedings before Magistrates for the recovery of Church-rates fail from the Churchwardens not being able to prove the notice of the vestry meeting from an incapacity to read it.

time is valid in law. The 89th Canon directs that they shall be chosen "by the joint consent of the Minister and Parishioners, if it may be; but if they cannot agree upon such a choice, then the minister shall choose one and the parishioners another"; but the provisions of the canon (though in exact agreement with the common right) may be superseded in the case of a special local usage, supposing it capable of being proved to have existed from time immemorial. Such usage would sanction the election of one churchwarden only, or the election of both by the parishioners, or by a select vestry, or by the old churchwardens, or by the lord of the manor. . But, in parishes where no such usage can be shewn, or a custom from any particular difficulty cannot be observed, then the canon, in one part or other of the alternative it presents, is to be adhered to. A custom that there shall be no churchwarden in a parish cannot be maintained.

The curate may represent the incumbent in a nomination.

It is now clearly settled that a *mandamus* may be taken to compel the persons in whom the right of electing churchwardens vests, to compel them to proceed to an election. After

they are chosen they must be admitted by the ordinary and make the required declaration before they are authorised to act: they then continue in office till the new churchwardens are chosen and admitted.

If a churchwarden leaves the parish his place must be supplied; and, if he misbehave, he may be removed by complaint to the bishop or ordinary.

Sidesmen or assistants are to be chosen by the Minister and Parishioners if they can agree, otherwise to be appointed by the ordinary; and such choice is to be yearly made in Easter week (Canon 90). They are to continue in office until the new churchwardens are admitted by the ordinary, and are themselves to be admitted in like manner as the churchwardens (Can. 118).

There are numerous cases in the north of England of large parishes being divided into several districts, townships, or tithings, where by ancient custom many churchwardens or chapelwardens are elected, each of whom, though separately chosen by, and acting specifically for, the respective district, township, or tithing, represents as it seems the whole parish.

HOW CHOSEN UNDER THE ACTS FOR BUILDING AND ENDOWING CHURCHES.

With regard to the election of churchwardens under some recent acts of Parliament for building and endowing churches, different provisions till lately applied to the different classes of churches and chapels;—namely,—those built under the provisions of the 58 Geo. III. c. 46, and 59 Geo. III. c. 134 ; and those built under the provisions of the 1 and 2 Wm. IV. c. 38. But important alterations have now been made by two recent Statutes in the mode of electing churchwardens to these and other churches and chapels. By the 6 and 7 Vict. c. 37, which relates to the formation of districts into new parishes, it is enacted, “ That, in every case of a district becoming a new parish under that act, two fit and proper persons, being members of the united church of England and Ireland, shall, within twenty-one days from the consecration of the church thereof, be chosen churchwardens for such new parish, one being chosen by the perpetual curate thereof, and the other by the inhabitants residing therein, and having a similar qualification to that which would entitle inhabitants to vote at the election of church-

wardens for the principal parish as aforesaid, or the majority of such inhabitants; and such election shall take place at a meeting to be summoned in such manner in all respects as such perpetual curate shall direct, and such persons shall continue such churchwardens until the next usual period for appointing parish officers following their appointment; and at the like time in every year two such persons shall thenceforward be chosen by the perpetual curate for the time being, and inhabitants assembled as aforesaid."

By the 8 and 9 Vict. c. 70 (an act for the further amendment of the church-building acts) it is enacted (section 6) "That, in all cases not otherwise expressly provided for, Two fit persons shall be annually appointed churchwardens for the church of every district chapelry or consolidated chapelry already or hereafter to be formed under the provisions of the hereinbefore recited acts or any of them, or this act, such persons residing within the district chapelry or consolidated chapelry; and the first appointment of two such persons shall, with respect to the church of any district chapelry or consolidated chapelry already formed as aforesaid, take place within two calendar months after the

passing of this act, and with respect to a chapelry district or consolidated chapelry to be hereafter formed as aforesaid, within two calendar months after the formation of the same ; and the first appointment of such persons, in either of such cases, shall take place at a meeting of the minister of such church and the householders of the district, to be summoned in all respects as such minister shall direct ; and every subsequent appointment shall take place at the usual period of appointing parish officers, at a meeting to be summoned in all respects as if such district were a parish and such meeting were a parish vestry meeting ; and in each such case one of such persons shall be chosen by the then Incumbent or Minister serving such church, and the other by the householders, or the majority of such householders, residing in such district chapelry or consolidated chapelry ; and the two persons, when so appointed and elected churchwardens, shall appear and be admitted according to law, and shall collect and receive the rents of the pews and seats in every such church, and pay the stipend or salary assigned by Her Majesty's said commissioners to the minister and clerk of such church, if the said commissioners have fixed the rents for the same, or

assigned such stipend or salary, and shall also do, perform, and execute all lawful acts, matters, and things necessary for and concerning the management, good order, and decency of behaviour to be kept and observed in such church by the congregation thereof, and for the recovery of such pew rents, if in arrear; and the money given at the offertory at such church shall be disposed of by the minister and churchwardens of such church, in the same manner as the money given at the offertory at any parish church is by law directed to be disposed of by the minister and churchwardens of such parish; and the persons so to be appointed and chosen churchwardens shall continue in their said office until others shall be appointed and chosen in like manner in their stead."

By section 7 which relates to the appointment of churchwardens for an additional church the site whereof has been accepted by the ecclesiastical commissioners but *without a district*, it is enacted, "That, in all cases not otherwise expressly provided for, Two fit and proper persons shall be annually appointed churchwardens for any new church (without a district) already built or hereafter to be built upon a site whereof Her Majesty's said com-

missioners shall have accepted the conveyance, under the provisions of the herein-before recited acts; and the first appointment of such persons shall take place within two calendar months after the passing of this act with respect to a church already built and consecrated, and within two months after the consecration of a church to be so hereafter built; and the next appointment of such persons, in either of such cases, shall take place at the next usual period of appointing parish officers; and in each such case one of such persons shall be chosen by the minister of such church, and the other by the renters of pews therein, or by the majority thereof, at any meeting to be summoned, in all respects as the minister of such church, or (if there shall be no minister) as the churchwardens going out of office, shall direct; and the two persons, when so appointed and elected churchwardens, shall appear and be admitted according to law, and shall collect and receive the rents, if any, of the pews and seats in any such church, and pay the stipend and salary, if any, assigned by the said commissioners to the minister and clerk of such church, and shall also do, perform, and execute all lawful acts, matters, and things necessary for and concerning the management,

good order, and decency of behaviour to be kept and observed in such church by the congregation thereof, and for the recovery of the pews in such church, if the same are in arrear ; and the persons so to be appointed and chosen churchwardens shall continue in their said office until others shall be appointed and admitted in like manner in their stead : provided always, that if there are no rented pews in such church the minister of such church shall appoint both churchwardens : provided also, that if such new church is made the church of a distinct and separate parish, district parish, district chapelry, or consolidated chapelry, the several provisions of the herein-before recited acts or this act touching the appointment and election of churchwardens for the same, and their powers and duties in each such case, shall thenceforth respectively apply to such church."

CHAPTER II.

On the duties of Churchwardens with respect to the Church Goods, and the repairs of the Church and Churchyard.

AS TO THE GOODS OF THE CHURCH.

THESE have been well defined and described to consist of what is not fixed to the freehold of the church, but are of the moveable goods belonging to it. Before we proceed to enumerate them in particular, we will state the law as applicable to these matters.

Upon the reformation taking place, it was necessary that an alteration should be made in the ornaments and goods of the church: accordingly these were settled by authority of parliament, in the year 1548, the second year of the reign of Edward VI. This settlement, having been disturbed in the reign of Mary, was confirmed immediately upon the accession of Elizabeth; and, by the 1 Eliz. c. 2. s. 25, such ornaments of the church, and of the ministers thereof, shall be retained and be used as was in

the church of England, by authority of parliament, in the second year of the reign of King Edward VI., until other order shall be therein taken by the authority of the queen's majesty, with the advice of her commissioners appointed and authorized under the great seal of England for causes ecclesiastical, or of the metropolitan of this realm. Pursuant to this last clause the queen in the third year of her reign granted a commission to reform the disorders introduced during the reign of Mary; and, by the rubric before the book of Common Prayer, such ornaments of the church and of the ministers thereof, at all times of their ministration, shall be retained, and be in use, as were in this church of England, by authority of parliament, in the second year of the reign of King Edward VI.

Such goods and ornaments are the following;—all which it appears are deemed necessary for the service of the the church, and which the parishioners, through their representatives the churchwardens, are, at their own charge, bound to provide.

By Canon 82. A convenient and decent table for the celebration of the Holy Communion.*

* This communion table must be moveable and made of wood. A stone altar is not a communion table within

By Canon 83. A comely and decent pulpit, to be set in a convenient place within the church, by the discretion of the ordinary of the place (if any question do arise), and to be there seemly kept for the preaching of God's word.

By Canon 82. A convenient seat for the minister to read service in.

By Canon 58. A decent and comely surplice with sleeves, to be provided at the charge of the parish; any question touching the decency, or comeliness thereof, to be decided by the discretion of the ordinary.

By Canon 81. A Font of stone in every church and chapel where baptism is to be ministered, the same to be set in the ancient usual place.

By Canon 84. A Chest for Alms in every church; which the churchwardens shall set and fasten in the most convenient place, to the intent the parishioners may put into it their alms for their poor neighbours.

the meaning of the rubric and canon, and, whether fixed to the freehold or not, cannot lawfully be substituted for a moveable wooden table. The use of a credence table has also been held by the same authority to be illegal. *Faulkner v. Litchfield and Steam, Arches.* H. T. 1845. M.S.

By the Rubric it is directed that an alms' basin be provided by the parish, in which the deacons, churchwardens, or other fit persons, are to receive the alms for the poor, and other devotions of the people, whilst the sentences of the offertory are in reading.

By Canon 20. The churchwardens are to provide a sufficient quantity of fine white bread, and of good and wholesome wine, for the service of each communion; which wine is to be brought to the table in a clean and sweet standing pot or stoop of pewter if not of purer metal.

The parishioners shall find the chalice or cup, or more than one if necessary, for the wine. Lindw. 252.

A bell to ring to church and toll at funerals : one bell seems all that is legally requisite. 3 Hag. 16.

A Bier for the dead. Lindw. 252.

By Canon 80. A Bible of the largest volume.

By 1 Eliz. c. 2 s. 19, the Book of Common Prayer is directed to be provided, and by Canon 80 the Book of Homilies allowed by authority.

By Canon 70. Register books for entering every Christening, Wedding, and Burial, are to be provided ; and by the 26 Geo. II. c. 33, and now by 4 Geo. IV. c. 76, the churchwardens

are to provide proper books of vellum, or good and durable paper ; in which all marriages and banns of marriages respectively, there published or solemnized, shall be registered, to be carefully kept and preserved for public use. And this obligation on the parish to provide suitable register books is supposed not to be affected by the act of 6 and 7 Wm. IV. c. 86 which provides for the establishment of the General Register Office in London or Westminster.

By Canon 99, a table of degrees of marriages prohibited by authority in the year 1563 shall be publicly set up in every church : and, by Canon 82, the ten commandments likewise at the east end of every church or chapel ; and, by this same canon, other chosen sentences shall be written upon the walls of the said churches and chapels,—these most frequently are the Lord's Prayer, the Apostles' Creed, &c.

The above appear to be all the things which are held *absolutely necessary* for the administration of the divine services of the church, and are all that the parish is absolutely enjoined to provide. And this originally was for the most part by the injunction of the canon law : but now by the statute also ; for the statutes mentioned above, and also the 13th of Charles II.

c. 4, which declare that all such things shall be proper for the use of the church, as were so considered in the second year of Edw. VI., are rendered permanent by the act of the 5th year of Q. Anne c. 5, which act was in the following year incorporated into the Act of Union (5 and 6 Anne c. 5) and which declares that all acts for the establishment and preservation of the Church of England, and the doctrine, worship, discipline, and government thereof, shall remain and be in full force for ever.

But besides these goods of the church which have been here enumerated, there are many other things for which no provision is made by any special law, and which are added only for the more decent and better administration of divine offices,—such as a pulpit-cloth and cushion, organ, branches for lights, candlesticks, furniture for the vestry, and such other things as are found in some more wealthy parishes to be provided by the parishioners, over and above what either the law or absolute necessity requires: the parishioners, in vestry assembled, may also grant salaries, if they think fit, for ringers, organists, &c.

The general rule deducible from what has here been stated is simple and easy of applica-

tion. As to all things necessary, the parish must, through its officers the churchwardens, provide, continue, and repair them: 'as to things not absolutely necessary, the parish need neither provide them in the first instance, nor continue and repair them if they have been already provided, except by wish and consent of the majority; but if the majority have voted a rate for that purpose, and the purpose appears reasonable under the circumstances, it will be upheld and enforced against dissentients. The parishioners, therefore, may see that they have no great reason to object to the erecting any thing reasonable and proper of the latter kind, on the ground of future expence to the parish; because the majority will always have the remedy, on that point, in their own hands.

AS TO THE CHURCH AND CHURCHYARD.

Their duty with respect to the Church is to keep in order not only the *fabric*, properly so called, but also whatever else is permanently affixed to the freehold. This includes all such parts belonging thereto as either the law or the nature of things themselves makes necessary in every church;—such as the walls, windows, doors, roofs, floor, font, pulpit, reading desk,

seats, tower, &c. : to which, for greater ornament and decency, are added, in many churches, altar pieces, &c. ; and, for the benefit and conveniency of the parishioners, a clock, a dial, a ring of bells, &c.

With respect to the Churchyard—the duty of churchwardens is to take care that it be decently kept and free from all useless earth and rubbish or any thing else which is unbecoming the place where the bodies of our brethren, who have departed in the faith, are resting in Christian hope : and, for the preservation of the said bodies and the graves in which they lie, they are to take care that the churchyard be well fenced,* and the gates, stiles, and doors be kept in due repair.

* If the owners of lands adjoining to the churchyard have used, time out of mind, to repair so much of the fence as adjoins their ground, such custom is good, and the churchwardens may have an action for neglecting the same.

CHAPTER III.

Their duty as respects calling a Vestry and making a Rate.

BEFORE we proceed to this part of their duty it may be necessary to remind churchwardens that no rate is legal if made for retrospective purposes; that is, if made to re-imburse their predecessors or to repay themselves: and let them clearly understand that an objection against the validity of a rate will equally prevail although it may not appear on the face of it to be retrospective; for, on principle, there is no real distinction between the case of a rate on the face of it retrospective, and one that is intended to cover debts, or parts of debts, previously incurred. This rule of law is founded on very obvious principles of policy and justice. The rate-payers being a fluctuating body, nothing, generally speaking, is more likely to lead to justice and economy than that they who create a charge should themselves bear it: but the effect of a retrospective rate is to remove the burden,

from the parishioners at the time the expence is incurred, to future parishioners. The regular way therefore, for churchwardens, is to raise the money before-hand by a rate made in the regular form, in order that the money may be paid by the existing parishioners at the time, and then to proceed to make the necessary repairs as speedily as convenient: justice and duty require this mode of proceeding, as well as prudence and economy.

Although a retrospective rate, in whole or in part, is bad; yet, when the sums objected to are trivial as compared with the whole amount of the rate, the court will leave them out of consideration and enforce the rate. It must also be remembered, that by a retrospective rate is to be understood a rate for defraying the expenses of a *past* year: a rate for the expenses of the *current* year, whether incurred before or after the making of the rate, is perfectly legal, and cannot be objected to as a retrospective rate. It is also essential, to the validity of a church-rate, that it be necessary for the purposes for which it is made: an excessive rate (that is, a rate for a much larger sum than is required) has been held illegal, because unnecessary to the extent that it is excessive.

The mode of making a church-rate is as follows. A rate is made by the churchwardens and parishioners, in vestry assembled, upon public notice being given. The notice must be affixed previously to the commencement of divine service on Sunday (taking care that three full days at least elapse before the day appointed for holding the vestry meeting*) on or near the doors of all churches and chapels within the parish; but by the word "chapel" is meant only chapels of the established church, not dissenting chapels.

The form of notice may be as follows:—

"[Name of the parish or chapelry.]

The parishioners are requested to take notice that a vestry meeting will be held on ——— next, the ——— day of ———, at ——— o'clock, in the fore[or after] noon, precisely, at the church [or chapel, or vestry-room, work-house, or other usual place of vestry meetings within the parish], for the purpose of [passing the accounts of the churchwardens, and of] making a rate or assessment for the repairs of the parish church for the present year, and for such other expenses as are by law chargeable on the church-rate.

"Dated this ——— day of ———.

* That is, not to hold the meeting before the Thursday following.

“ Signed A. B. }
 C. D. } Churchwardens.”*

[The notice to pass the churchwardens' accounts may be omitted or not according to circumstances.]

This form of notice will be quite sufficient when the object of the meeting is merely to take into consideration the state and condition of the church and churchyard, and the necessity of levying a rate for the repairs thereof, and for providing such necessities as may be required for the decent celebration of divine worship: but, if any special and unusual purpose be contemplated—as, for instance, the erection of a new gallery—churchwardens cannot be too careful as to the form of their notice and had therefore better consult some professional adviser; for all their proceedings will be invalid, and they will have no power of enforcing the vote of the vestry, unless their notice be sufficiently specific.

The vestry being regularly convened, the minister, if present, has a right to preside. Vestries are, from their very constitution, *ecclesiastical* meetings,—and the minister, as such,

* The fittest person to sign the notice is the minister, but it is lawful and properly done if signed by the churchwardens or one of them.

is an integral part of the parish, and of those meetings; and on general usage and right he may rest his claim to preside: to elect, indeed, any other person to the office of chairman would be to place him in a degraded position, one in which he is not placed by the constitutional establishment of his country. But, if the rector, vicar, or perpetual curate be not present, then the meeting shall proceed to elect a chairman, by a plurality of votes, who shall, in all cases where the votes are equal, have the casting vote in addition to his own vote according to his assessment: and minutes of the proceedings and resolutions of the vestry shall be fairly and distinctly entered in a book to be provided, for that purpose, by the churchwardens and overseers, and shall be signed by the chairman and by such other of the inhabitants present as shall think proper.

WHO MAY BE PRESENT AND VOTE.

The persons who have a right to be present and vote at the vestry are points regulated by act of parliament, the provisions of which are important and necessary to be known.

All persons rated to the relief of the poor have a right to be present and vote at the

vestry, whether inhabitants of the parish or not; and this right is also extended to all inhabitants coming into the parish since the last rate for the relief of the poor, if they consent to be rated : but no person is entitled to vote who shall have neglected or refused to pay any rate which may be due, and shall have been demanded of him ; nor is he entitled to be present at the vestry meeting.

Every inhabitant present, who, by the last rate made for the relief of the poor, shall have been assessed in any sum not amounting to £50, shall give one vote and no more ; and if assessed at £50 or upwards (whether in one or more than one charge) shall be entitled to give one vote for every £25 in respect of which he shall have been assessed, so that no inhabitant shall give more than six votes : and, where two or more of the inhabitants present shall be jointly rated, each shall vote according to the proportion which shall be borne by him of the joint charge ; and, where only one of the persons jointly rated shall attend, he shall vote according to the whole of the joint charge ;— and the clerk, secretary, steward, or agent of any corporation or company, may vote for the corporation or company.

The mode of taking the votes at the vestry is also of importance to be understood; for, if improperly conducted, it may affect the validity of the proceedings.

There are two modes at common law—one by show of hands and the other by a poll: but the former is a very rude and imperfect declaration of the opinions of the electors; besides, a show of hands would be no criterion of the number of votes under the vestry act which gives to voters a plurality of votes in proportion to the amount of the assessment. An election by show of hands alone, therefore, is necessarily inconsistent with the allowance of a plurality of votes in any one person. The poll seems, indeed, the only mode of ascertaining with correctness the number of those who vote on each side.

If a poll be, therefore, demanded, it ought undoubtedly to be granted. As to the time of keeping it open, "it is not very easy," said a learned judge, "to determine what time should be allowed, all that can be said is, that, where no custom exists, a reasonable time should be given to every person entitled to vote": but the time need only be fixed so as to allow every person *qualified* to tender and record his vote, without any reference as to what may be done

by persons not qualified. It is no part of the purpose for which a poll is demanded that it should give time for the payment of the rates, but only to allow persons already qualified sufficient time to tender and record their votes.

It is no valid objection to the proceedings that the chairman directed a poll without first taking a show of hands; although a show of hands was demanded, and a poll not demanded but objected to. Nor is there any objection to a person, not present at the show of hands, voting afterwards, if a poll be granted.

The churchwardens having previously surveyed the church and churchyard, and taken an account of the repairs wanted and made estimates of the costs of such repairs together with the utensils and ordinary expenses required for the decent celebration of public worship, are now to submit their estimates to the vestry and propose, or some vestry-man for them, an adequate rate. The churchwardens, it seems, are bound by law to furnish such estimates: but of course they can only be *probable* estimates; they cannot be expected before-hand to ascertain the exact sum that may be wanted. The parishioners are not, however, bound to adopt their estimates: they have a right to see that the

estimates of the proposed expenditure are reasonable and proper; and they are more than justified in taking every prudential precaution that the money about to be raised shall be disbursed honestly and efficiently. These matters they have a right to investigate; and they are the proper judges of the amount of the rate required, provided they act in good faith and do not obstinately refuse to make a rate or grant one manifestly colourable or evasive. If the vestry grant a rate not manifestly of this character, the churchwardens should accept it and apply it as far as it will go: and, when exhausted, another vestry should be convened for a further rate; for the Spiritual Court will not take upon itself the power to decide upon the amount of the rate—that is a matter peculiarly for the consideration of the vestry.

It seems now to be settled that if the church require repairs—if, in fact, a rate be necessary—the parishioners have no right to evade the question by proposals of an adjournment: any amendment of this kind ought to be met by the chairman by a firm refusal to put it; so that the real question—will the vestry grant the rate or not?—may at once be brought to issue.

This is the course now recommended and sanctioned by high authority.

Strictly speaking, when a rate is made, a regular valuation should then be made, and an equal assessment laid on all the rateable property of the parish. But, in ordinary cases, the poor-rate furnishes a fair ground upon which to lay the church-rate; for the poor-rate is a great and constant charge, and the parishioners are deeply interested in its fairness,—the presumption, therefore, is strongly in favour of its justice and equality. But the safest way is for the churchwardens to leave this matter to the parishioners who make the rate, to say, at the time, whether it shall be made according to the poor-rate or how it shall be made: If, however, there be a valuation of all the lands and houses in the parish, justly and fairly made, and all be equally assessed by a pound rate according thereto, there can be no error or injustice in this matter. It may be well here to observe that the ecclesiastical judges have frequently severely censured frivolous opposition to the payment of church-rates on the grounds of inequality of assessment. The resistance produces great inconvenience to the parish, as it increases the burden of the rates: it excites disputes and animosities, and

ought not to be made on slight grounds. Not that a person would fail, if he succeeded in establishing a *material* inequality; but the burden of proof lies upon him, and he must satisfactorily prove a material inequality or, if he fail, he will be condemned in costs.

The form of a church-rate may be this:—

“ We, the Churchwardens and other parishioners of the parish of ——— in the county of ——— and diocese of ———, whose names are hereunto subscribed, do hereby, this ——— day of ——— in the year 18— at our vestry meeting in pursuance of due notice for that purpose assembled, rate and tax all and every the inhabitants of the parish aforesaid, hereunto mentioned, for and towards the repairs of the Church of the said parish for the present year, and for such other expenses as are by law chargeable on the Church-rate, the several sums following, being at and after the rate of — in the pound.

“ A. B. £1 2 0

C. D. 0 1 6

[And so on.]

E. F.	}	Churchwardens.
G. H.		
J. K.	}	Parishioners.”
L. M.		
&c.		

This form is quite sufficient when the church-rate is made on the same assessment as the poor-rate; because the inhabitants, having access

to the poor-rate assessment, can ascertain from that source all necessary particulars : but when it is made on a separate and independent assessment it is very advisable to add, opposite the name of each parishioner, a general statement of the nature and situation, or name or other sufficient description, of the property rated.

If a parish consist of several townships or vills (of which there are some instances in this neighbourhood), and there is a custom to levy the rate in certain proportions, this custom must be followed ; for it may be, or may have been in its commencement, reasonable.

There are also instances [(the parish of Ribchester, I believe, is one) of a church-rate being made by a select vestry ; which rate is considered binding, according to the usage of the parish, upon the several townships, in the same proportions in which they have hitherto been liable to contribute to the general rate of the parish.

The inhabitants of a chapelry within the precincts of a parish, though they possess a parochial chapel of their own and are liable to its repairs, are, nevertheless, of common right obliged to contribute to the repairs of the mother church. There are, however, many

instances in which the inhabitants of such a chapelry may prescribe to be exempt from contributing to the repairs of the mother church ; because then the chapel shall be intended to be coeval and not a later erection ; but nothing short of a prescription seems to be sufficient, unless, indeed, they can shew an exemption upon the endowment. Parochial chapels have the same officers for the most part as churches have, distinguished only in name ; and the repairs of these chapels must be made by assessments in the same way as for the repair of churches ; but this must be considered of ancient chapels, and where this course has been practised. Of new chapels of ease there may be, says Sir Simon Degge, some question whether the ordinary can compel the inhabitants to repair the same. But, when a number of people have for their ease joined together and erected a chapel and procured the bishop to consecrate it (which was the original manner of erecting churches), it would seem in reason that the bishop should have the same power to compel the repairs as he has to visit it. But there is no doubt, continues the same authority, that the inhabitants of a chapelry, or the major part of them, may agree to make an assessment for the

repairs of such a chapel, and agree that the collector, for default of payment, should distrain for it; and I conceive such by-law for a public good, made by a greater number, shall bind the rest.

In cases of proprietary chapels the repairs are not a parochial matter, but are to be made out of the funds of the chapel itself.

If a rate be granted and made, the regular mode then is to have it confirmed by the ordinary, in order that any person who thinks himself aggrieved may enter a *caveat* against such confirmation, and the ordinary will either confirm the rate or quash it according to the merits of the case: but, although it is proper to apply for a confirmation of the rate, such confirmation is not essential to the validity of the rate, neither is it any obstacle to its being sued upon in the Ecclesiastical Courts; nor does it prevent any person from resisting payment of the rate, if he have any legal objection to its validity,—but it prevents him from being allowed to take proceedings, in the Ecclesiastical Court, to set aside the rate altogether. The only method of quashing the rate is by entering a *caveat* against the confirmation.

When the object of the rate is only to *repair*

or *restore*, nothing further need be done to entitle the churchwardens to enforce the payment of the rate; but, if any new additions or erections are to be made, they cannot legally be made without the licence of the ordinary. Therefore let churchwardens understand that, though the major part of the parishioners have consented to such new additions and empowered them to make a rate for that purpose, yet they have no remedy against any one who refuses payment, inasmuch as the thing being illegally done,—that is without the authority which the law requires to warrant it,—no rate will be judged legal which shall be made for it. And, therefore, if the churchwardens would erect a new seat, or add any thing to the church, they cannot legally do it unless they have, first, the consent of the major part of the parish and, next, the licence of the ordinary, to justify them in doing it. And the reason of this is plain: the consent of the parish is made necessary to secure them from unreasonable and improper taxation; the licence of the ordinary is required to secure the church from having any thing unbecoming erected in it. If, however, the addition be not for a religious purpose, but only for the convenience or pleasure of the parishioners—as

a clock, a dial, or a ring of bells, &c. ; in such matters the licence of the ordinary is not necessary—the consent of a majority of the parishoners is alone sufficient. And it seems to follow, also, that, if any individual, having obtained the leave of the ordinary, desire at his own cost to erect an organ or any thing else, the consent of the parish is in no way concerned, not being called upon to contribute to the expence.

There are various acts of parliament, called church-building acts, empowering churchwardens to borrow money, on the security of the church-rates, for enlarging or otherwise extending accommodation in churches, and also for the purpose of repairs. To render a rate valid, for the repayment of money so borrowed, the requisites of these acts must be strictly complied with ; and therefore, in important cases of this kind, it is recommended to churchwardens to act throughout under the guidance of some one able to direct and advise them.

With respect to the repairs of subscription chapels, built and appropriated under 5 Geo. IV. c. 103, they are to be provided for by means of a repair fund, arising out of pew rents, aided, in some cases, by the surplus proceeds out of the

sale of vaults and burial places : those of chapels built and appropriated under 1 and 2 Wm. IV. c. 38., and 3 and 4 Vict. c. 60, by means of a repair fund, consisting of one sum equal in amount to 5 per cent. upon the original cost of erecting and fitting up, to be secured upon money in the funds, or upon lands ; and also a further sum to be reserved annually out of the pew rents of the said chapel after the rate of 5 per cent. of the sum so to be provided as last aforesaid.

With respect to new parishes formed under the recent statute of the 6 and 7 Vict. c. 37, they are to be repaired, it is supposed, by rates upon such new parishes : for it is provided, by the 15th s., that every new parish under that act shall be and be deemed to be a new parish for ecclesiastical purposes ; and, by the 17th s., that the churchwardens of such new parishes shall do all things pertaining to the office of churchwarden as to ecclesiastical matters in the said new parish. Whether these new parishes remain liable to the repairs of the churches of the original parishes is a question of great nicety. There is certainly some ground for contending that they do remain so liable : for there seems to be no express enactment or necessary implica-

tion to the contrary; and the 18th section of the 6 and 7 Vict. c. 37 provides that, until parliament shall otherwise determine, nothing in that act contained shall be construed to affect or alter any rights, privileges, or liabilities whatsoever, *ecclesiastical* or civil, of any parish, chapelry or district, except as is therein expressly provided.

The general conclusion, therefore, (says Prideaux in his practical guide,) to be drawn from the above passages, with reference to the repairs of churches and chapels under the church-building acts, are as follow:—

1. Separate and distinct parishes are to be repaired by rates on such separate and distinct parishes. New parishes, under 6 and 7 Vict. c. 37, by rates on such new parishes.
2. District parishes, by rates on such district parishes.
3. Chapels built and endowed by private persons by means of a repair fund vested in certain trustees for the purpose of repair.
4. District parishes remain liable to the repairs of the mother church for twenty years from the respective days of consecration of the district parish churches.

5. Sub-district parishes remain liable to the repairs of the churches of the original districts, and are also liable to the repairs of the churches of the original parishes for twenty years from the date of the consecration of the original district churches ; but all liability as to the repairs of the original district churches may be determined by instrument under the hands of the commissioners.
6. District chapelries and chapelries without districts under 58 Geo. III. c. 45 by rates on the parishes or places in aid of which they were built or appropriated.

CHAPTER IV.

On the Mode of Enforcing the Payment of Church Rates.

AT Common Law the proceedings to enforce the payment of church-rates must have been taken in the Ecclesiastical Courts; but, in consequence of the delays and expence incident to suits in these courts, the legislature has in certain cases provided for the recovery of church-rates before Justices of the Peace, where the sum sought to be recovered does not exceed £10., or, in the case of Quakers, £50. Justices of the Peace are not invested with any power to decide the validity of the rate or the liability of the person to pay it, that power still belongs exclusively to the Ecclesiastical Courts. But the sole object of the statutes, which give Justices jurisdiction, is to give a remedy by summary proceeding in the case of a church-rate withheld.

If there be no defect apparent on the face of the rate, and the proceedings before the Jus-

tices are regular, and the person withholding the rate gives no notice of his intention to dispute the validity of the rate or his liability to pay it, the Justices will enter upon the hearing without reference to the validity of the rate: for they have no right, as observed before, to inquire into any matters that may in any degree affect it, or to refuse to proceed to adjudicate upon any objections raised by themselves.

An appeal is given, to the Quarter Sessions, to any person who shall find himself aggrieved by the decision of the Justices; and there can be no doubt that under these words the churchwardens are entitled to this appeal, as well as the party from whom the rate is sought to be recovered.

The mode of recovery of church-rates from Quakers varies a little. In their case the Justices are to examine *the truth and justice of the complaint* of the churchwardens: and, as there are no provisions in the several acts for the recovery of church-rates from Quakers to prevent the jurisdiction of the Justices from attaching, it is thought that the Justices have for all purposes as well of *law* as of *fact*, complete and (since 5 and 6 Will. IV., c. 75, s. 1) exclusive jurisdiction in those cases, subject

of course to the appeal at the Quarter Sessions.

In cases of distress for church-rates, upon the goods of Quakers, the law differs also a little. The Justices are not required, in their warrant of distress, to limit the time of sale for the goods distrained: the goods of Quakers may be sold *immediately* upon the distress being made. But these are matters which concern the Justices rather than the churchwardens. All the churchwardens have to do after demanding the sum due upon the rate from the person withholding it, and then obtaining the summons, is:—To produce before the Justices a copy of the notice convening the vestry at which the church-rate was laid, and prove that it was affixed before the commencement of divine service on or near the doors of all the churches and chapels in the parish; to produce the rate and prove that it was duly made in vestry—the amount of the assessment upon the individual summoned, and his refusal and neglect to pay it.*

* Hitherto there has, in many places, been great carelessness on the part of the churchwardens and vestries, in the mode of levying church-rates; let them avoid any negligence for the future: their course of proceeding is plain and easy enough, if they will only give it their attention. They need not be told that if they are found

The complaint is to be laid by the churchwarden or churchwardens, chapelwarden or chapelwardens, who ought to receive and collect the rate; that is, in ordinary cases, by the churchwardens of the parish, upon their *joint* complaint: but where there are by custom several churchwardens in a parish, each acting for a separate district, the churchwarden of the district in respect of which the rate is payable is the proper party to make the complaint.

If churchwardens neglect or refuse to discharge their duties in respect of church-rates, the Court Christian has adequate authority to punish any neglect of duty committed to their charge: but, in order to render them liable to *criminal* proceedings in the Ecclesiastical

to err, even in the merest point of form and where the fairness of the rate is perhaps in no degree affected, there will now be found some individuals ready to take advantage of the error, and, by withholding their proportion of the rate, produce confusion in the proceedings:—and thus it often happens that the rate can only be partially collected, to the great injustice of well-disposed rate-payers. No doubt the levying of a church-rate has lately become, in some places, one of the most unpleasant parts of a churchwarden's duty; but let him manfully meet the annoyance, and be determined to do justice to the trust committed to his keeping.

Courts, it must be shewn that they are personally to blame, and have been guilty of wilful disobedience. It would be a sufficient answer to a monition to repair the church, for the churchwardens to shew that they had called a vestry, and that such vestry had refused the rate ; for nothing is more clear than that churchwardens are not bound, and that it is illegal in them, to expend their own money or to incur debt.

The churchwardens may be compelled, by *mandamus* from the Court of Queen's Bench, to call a vestry meeting for the purpose of deliberating on the propriety of making a church-rate : for although the court will not interfere by *mandamus* to compel the churchwardens, &c., to make a church-rate, which is properly of ecclesiastical cognizance, yet they will compel them to assemble in order to inquire and agree whether it be fit that a rate should be made.

Any attempt to excite resistance to the payment of church-rates, or to render odious those who collect them, is illegal ; and if two or more persons combine together to defeat the ends of justice, by preventing the lawful levying of church-rates, they may be indicted for a conspiracy.

A case well known by the name of "the Braintree Church-rate Case" has for a long time been before the courts, in which principles have been acknowledged of the highest importance in the levying of church-rates: and, as it is in itself a treatise on the law of church-rates, it has been thought advisable to give it here at some length for the information of church-wardens.

The case relates to the extent of the liability of the parishioners to repair their church.

And, first, with respect to the nature and extent of the legal obligation imposed upon parishioners to repair their parish church. It was laid down in the course of the proceedings in this case, with more than ordinary exactness, that no one who actually resides within a parish, or occupies lands or tenements in it, can absolve himself from the obligation, imposed upon him by the Common Law of the land, of repairing and keeping in repair his parish church, and from providing therein all things essential for the performance of divine worship.

"The repair of the fabric of the church is a duty which the parishioners are compellable to perform, not a mere voluntary act which they may perform or decline at their own discretion;

the law is imperative upon them absolutely that they do repair the church, not binding on them in a qualified or limited manner only, that they may repair or not, as they think fit ; and where it so happens that the fabric of the church stands in need of repair, the only question upon which the parishioners when convened together to make a rate can by law deliberate and determine is, not whether they will repair the church or not (for upon that point they are concluded by the law,) but how and in what manner the common law obligation so binding them may be best and most effectually, and at the same time most conveniently, performed and carried into effect."*

These were the principles laid down with more than ordinary solemnity and precision : and the churchwardens of Braintree, fortified by them, took steps for making a rate for the repair of their church, which was fast advancing to a state of melancholy dilapidation. In the previous proceedings they had attempted to enforce a church-rate for the necessary repairs of their church after it had been refused by a majority

* Judgment delivered, in the Braintree Church-rate Case, by Lord C. J. Tindal.

of parishioners in vestry assembled, but which they, *upon their own sole authority and at a subsequent meeting and not at a parish vestry*, had imposed. This rate was resisted as a rate attempted to be laid and enforced without any competent authority in that behalf, and the Court held that it was invalid. This decision, however, left untouched the question as to the validity of a rate made at a duly-convened vestry meeting by the churchwardens in concert with the minority of the parishioners, the majority having refused the rate. And there is "a wide and substantial difference" between the two questions: "it is obvious," said the same able and upright judge, the late Chief Justice Tindal, in delivering the decision of the eight Judges of the Exchequer chamber—"it is obvious that there is a wide and substantial difference between the churchwardens alone, or the churchwardens and the minority together, making a rate at the meeting of the parishioners when the refusal takes place, and the churchwardens possessing the power of rating the parish by themselves at any future time, however distant." The distinction here so clearly suggested the churchwardens of Braintree at once determined to proceed upon; and this

time they were at great pains to have all their proceedings regular. At the instance of the vicar a monition issued from the Consistory Court, requiring the churchwardens and parishioners to meet and make a rate. A vestry was duly convened for that purpose, and a rate of two shillings in the pound was proposed and refused by the majority ; whereupon the churchwardens and the minority together made the rate at the same meeting. The rate was objected to on the ground that it was made by a minority of the parishioners in vestry, and on that ground the Judge of the Consistory court, Dr. Lushington, delivered an elaborate judgment *against* its validity. An appeal was carried to the Court of Arches: and the Judge, Sir H. Jenner Fust, reversed the judgment of Dr. Lushington, and pronounced *in favour* of the validity of the rate. His decision is in the spirit of the quotation we have given before from the judgment of Chief Justice Tindal. He lays it down distinctly that the legitimate duty of a vestry is, not to consider whether a rate shall or shall not be made, but to deliberate upon the amount and application of a rate which the parishioners are bound to make if the church needs repair; that votes in opposition to the making of any

rate at all, when repairs of the fabric of the church are required, being given for an illegal object are null and void; and that, consequently, a rate made by the churchwardens and a minority of the vestry is valid in law.

This decision, as might have been expected, did not remain unquestioned. A rule for a prohibition was applied for to the Court of Queen's Bench, to restrain the Court of Arches from proceeding to enforce the rate: leave was given to declare in prohibition, in order that the question of the validity of the rate might be raised upon a demurrer in like manner as in the former Braintree case. The demurrer has now been argued, and the Court of Queen's Bench has just pronounced the decision. Lord Denman delivered the judgment of the Court, which is briefly as follows. The learned Lord commenced with observing that the judgment had been delayed, in consequence of the difficulty and importance of the subject, for a longer period than would otherwise have been necessary: he then reviewed at great length all the authorities, and went over all the facts with great minuteness; after which he pronounced judgment. The Court held that the parishioners were bound by law to pay the expence necessary

for the decent and proper celebration of the church,—that the proper way to do so was by imposing a money rate, and that that rate should be made in vestry assembled. In the case before the court it appeared that the meeting had been properly called; and that the proposition for making the rate had been duly put: and that an amendment was proposed, which was supported by the majority of the meeting, objecting to the making of any compulsory rate, on the ground that it was opposed to their conscientious scruples and feelings; that the chairman refused to act upon that amendment which was carried by a large majority and that, thereupon, the majority left the meeting, and, there being no other amendment proposed, the rate as originally proposed was agreed to. This was the course of proceeding; and the court was of opinion that it was regular, and that the rate was properly and legally made. Had the majority proposed an alteration of the amount of the rate, or moved an amendment pertinent and relevant to the object of the meeting, the circumstances of the case would have been altered; but as the amendment was wholly beside the object for which the meeting was called, and as the majority did not propose any

pertinent amendment but left the church, "the Court must look upon that amendment, and the opposition, as if it had not been made at all, and must therefore decide in favour of the defendant."

Such is a short account of this celebrated church-rate case—a case which has now been the subject of litigation for nearly ten years and upon the several questions connected with which no less than five solemn judgments have been delivered, after a number of elaborate arguments, in the courts of common law and ecclesiastical jurisdiction. The evils of an indefinite and incomplete law, or a law not clearly laid down, have, in this case, been most abundantly illustrated: but now the law relating to church-rates is settled; and we know that the liability of parishioners extends to all *necessary* repairs,—that is, to such repairs as are necessary for the sustentation of the fabric of the church, and the preservation and protection of the churchyard, and to the providing of such utensils, &c., as are proper for the decent celebration of divine worship, and the due administration of the holy sacraments and the other rites and ceremonies of the church.

It is presumed that the effect of this im-

portant judgment is no more than to declare the opinion of the Court, that the churchwardens and the minority in vestry assembled have, in this instance, pursued a course fully warranted by law in compelling parties to perform the obligation imposed upon them by the common law of the land. All the powers with which the spiritual court is invested by law to compel the reparation of the church are left still untouched by this decision. If that court is empowered, as is stated by Lyndewode (*voce, subpæna*) and other ecclesiastical writers, to compel the churchwardens to repair the church, by spiritual censures—to call upon them to assemble the parishioners together by due notice to make a sufficient rate,—to punish such of the parishioners as refuse to perform their duty in joining in the rate, by excommunication (that is, since the statute of 53 Geo. III. c. 127, by imprisonment), and under the same penalty to compel each parishioner to pay his proportion of the church-rate; the same power will still remain with the spiritual court, notwithstanding the decision in this case.

It is scarcely, perhaps, likely that the churchwardens will now proceed criminally against parishioners who refuse the rates : for, as rates

are now pronounced valid which are made by themselves and minorities in vestry, they could not, perhaps, successfully or legally do so, for, in such case, the parishioners who refused the rate would not have been guilty of any ecclesiastical offence. In a recent case, however, called the Norwich case, a different course was adopted. It was not sought in that case to enforce a rate made by the minority of the vestry ; but to punish the refractory parishioners by ecclesiastical censures : and criminal proceedings were accordingly instituted against one of the parties in the Court of Arches, by virtue of letters of request from the Consistorial Court of Norwich. The citation called upon John Francis, a parishioner of the parish of St. George, Colegate, Norwich, to appear and answer articles "for having wilfully and contumaciously obstructed, or at least refused to make, or join or concur in the making of a sufficient rate or assessment, for providing funds in order to defray the expense of the necessary repairs of the church." The defendant appeared under protest and contended that the citation did not disclose any ecclesiastical offence : but Sir Herbert Jenner Fust overruled the protest, and assigned him to appear absolutely.

A prohibition was indeed subsequently obtained from the Court of Queen's Bench to restrain the Court Christian from proceeding with the suit: but the judgment of the Temporal Court, far from denying the right of the *Ecclesiastical Court* to punish the refractory parishioner, expressly recognizes such right; and the prohibition issued upon the ground that the citation was not sufficiently explicit, and did not sufficiently shew a refusal or obstruction of the rate, under circumstances which were necessarily inexcusable. It had, indeed, been previously decided that criminal proceedings could not be sustained against a parishioner for refusing to repair his parish church; unless it appeared that the conduct of the parishioner was wilful and contumacious, and also that in consequence of the refusal of the rate the church became dilapidated.

CHAPTER V.

On the proceedings in the Ecclesiastical Courts to enforce the payment of Church-rates.

It does not fall within the intention, of this work, to point out the mode of proceeding, in the Ecclesiastical Courts, for the subtraction of church-rates. It may be useful however, by way of caution to churchwardens, to mention the usual grounds upon which payment of a church-rate is disputed in these courts.

First. That the rate was illegally made.

Secondly. That the rate was made for an illegal purpose.

Thirdly. That the Defendant is unfairly assessed.

Fourthly. That the Defendant is assessed in respect of property for which he is not liable.

Fifthly. That the rate is unnecessary ; which means that the churchwardens are in the actual possession of funds, clearly applicable to the church-rate, and sufficient, if so applied, to render the rate unnecessary. In like manner if there be an uncollected rate, such being sufficient. In these cases the court would pronounce against the validity of the rate.

CHAPTER VI.

*On their duties with respect to Pews and Sitzings
in the Church.*

THE general law, with respect to pews and sittings, seems not sufficiently understood by churchwardens; and, as erroneous notions upon this subject have led to contention and practical inconvenience, it may be of use to give a summary of the grounds upon which the law now rests.

By the general law, and of common right, all the pews in the parish church are the common property of the parish: they are for the use, in common, of the parishioners, who are all entitled to be seated orderly and conveniently, so as best to provide for the accommodation of all. The arrangement and distribution of the seats rest with the churchwardens, as the parochial officers of the ordinary, and subject always to his revision and control. Neither the minister nor the vestry have any authority in this matter, as often erroneously supposed: they are not the

representatives of the ordinary, and have no delegated authority from him ; and consequently the churchwardens are not bound to follow their directions, although the opinion of the vestry and the advice of the minister may properly be asked and ought always to be received with deference and respect.

The duty of churchwardens is to look to the general accommodation of the parish, consulting, as far as may be, that of all the inhabitants. The parishioners indeed have a claim to be seated according to their rank and station ; but the churchwardens are not, in providing for this, to overlook the claims of all to be seated if sittings can be afforded them : accordingly they are bound, in particular, not to accommodate the higher classes, beyond their real wants, to the exclusion of their poorer neighbours, who are equally entitled to accommodation, supposing the seats to be equally convenient. Such are the duties of churchwardens in seating and arranging the parishioners in their several parish churches : but the actual exercise of their office is too frequently interfered with by *faculties*, appropriating certain pews to certain individuals, in different forms and with different limitations,

and by the *prescriptive rights* to pews of which these faculties have been the occasion.*

By a *faculty* a pew is appropriated, sometimes to a person in respect of a house whilst he and his family continue to occupy it: at other times, so long as he continues an inhabitant of the parish and member of the Church of England. But, however granted, this privilege to sit in a particular pew is always to be considered as annexed to the house and not to the person. It cannot, therefore, be granted to a man and his heirs, because that professes to give the right whether a man be resident or not: nor, inasmuch as it is a privilege conferred on inhabitancy, can it be conferred on a man in respect of a particular estate in the parish. Being appurtenant to the house, if the house be let the tenant is entitled to the pew; and, if let

* It is to be greatly regretted that faculties should have been granted in former times with such ready facility and with so little consideration and foresight: the result has been that, in many parish churches, the inhabitants are deprived, in a great degree, of suitable accommodation,—or, which is the same thing as to any practical result, are supposed to be so deprived. This last remark is made because, in very many instances, these exclusive rights to pews are founded merely on supposition; and would, I believe, turn out, on investigation, to be no rights at all.

to more than one person, it is apportionable among the distinct inhabitants of the house.

While upon the subject of pews, it may not be without its use to observe upon some other erroneous ideas which prevail respecting them. When a house is sold to which a pew had been made appurtenant by a faculty, the owner thinks he has a right to reserve the pew, and to let or sell it afterwards, as he may think fit. Now this is altogether a mistake; for no proposition in ecclesiastical law is better established than this—That a church pew can neither be sold nor let, directly or indirectly, either by the ordinary, the churchwardens, or any private individual, nor can any custom or consideration possibly legalize such a transaction. “It is an abuse,” says Lord Stowell, “which cannot be maintained, for use cannot be made of pews as of villas or other common property.”*

* There is no such thing in law (says Anderdon) as selling pews. There is one clause in this faculty (says Sir W. Scott, in the case of *Stephen v. Woodhouse*) which is plainly illegal—a permission to parties to sell seats; this is a practice which may have prevailed frequently, but it has been constantly discountenanced by this court. Pews may be sold in chapels which are private property, but in old parish churches such acts are contrary to the laws of the land. Dr. Phillimore says,

A *prescriptive right* to a sitting can be established only by an immemorial use of it, as appurtenant to a particular mansion, and by a reparation of it when repairs were needed. To support a right of this kind a person must be able to give such evidence of user, repairs, or other circumstances, as are usually proved in support of prescriptive rights; such as may reasonably lead a Judge in the Ecclesiastical

“It appears that the pews in this church have been bought and sold, and bequeathed by will; and that the guarantee has considered that he might deal with them as with an estate held in fee simple. These notions are perfectly erroneous: the sale of pews in a parish church is invalid and illegal. As it is unlawful for private individuals to sell so it is unlawful for them to let pews. The disposal of pews rests with the churchwardens, who are the officers of the bishop.” It is evidently an illegal custom (says Sir W. Scott) that pews appurtenant to certain houses, should be let by the owners to persons who are not inhabitants. If a pew is rightly appurtenant, the occupancy of it must pass with the house. From all this (Anderdon says) it is clear that the owner of a pew cannot let it out for rent; for seats do not belong to persons not inhabitants; and if a parishioner entitled to a pew does not use it, it returns to the disposal of the churchwardens. It is also an error to suppose that pews are appurtenant to land; they are only appurtenant to houses. If the house falls the appurtenance ceases. If the occupier does not go to church, the churchwardens may place another parishioner in his pew.

Court, or a jury in a Court of Law, to the conclusion that the right, thus immemorially exercised by him and his predecessors, was originally derived from a faculty.

In the Ecclesiastical Courts such a right has never been presumed upon mere user alone; and although mere user, if long continued, has been left to a jury as evidence upon which they might, even taken alone, presume a faculty,—yet it would seem that mere user of a pew, from the very mode in which pews are allotted or occupied, is of so equivocal a character that of itself, and without any circumstances to give it the character of user adverse to the churchwardens, it is hardly a sufficient foundation to support a prescriptive right.

Generally, however, the repairing the seat is considered as the only decisive fact leading to the presumption of a prescriptive right: but, then, it must be substantial repairs, such as may be considered as having been done in relief of the parish; putting cushions and lining, for the comfort merely of those who frequent the pew, cannot be considered as such repairs.

Formerly an alleged *prescriptive right* was liable to be defeated by shewing that the usage commenced at any time subsequent to the reign

of Richard I.; for, as human memory is curiously supposed, by the common law, to be able to reach back to that period, it would not, in the eye of the law, be an immemorial, or time-out-of-mind, usage, if it commenced at any later date. But, since the statute 2 and 3 Wm. IV. c. 71 was passed (which is called "An Act for shortening the time of prescriptions in certain cases"), where there has been an enjoyment of any way or *other easement*, &c., by a person claiming a right to it, without interruption, for twenty years next before the commencement of any suit upon the subject, the prescriptive claim shall no longer be defeated (as it formerly might) by shewing that the enjoyment commenced at a period subsequent to the time of Richard I.

Now, it is apprehended that the amount of evidence necessary to support a prescriptive title to a pew will be measured according to the provisions of this act. The act does not, indeed, expressly mention pews by name: but it purports to shorten the time of prescription in all cases of *easements*; and a pew is considered to belong to the class of easements. The general meaning of which word is "a convenience unaccompanied by pecuniary profit, which a person enjoys in or

over the land of another." It is well known that the freehold of the soil on which a parish church is built is vested in the incumbent: from which it follows that the highest property which a parishioner can have in a pew, must be something inferior to the freehold, inasmuch as that is already disposed of. The right to a pew is in fact no more than an exclusive right to kneel, stand, and sit, during divine service, upon the spot in question. This right obviously falls under the definition of an easement as stated above.

Assuming, therefore, that the right to a pew annexed to a dwelling-house is in fact an easement in law, the proof of a prescriptive title to it will, in all cases which may occur subsequently to the 2 and 3 Wm. IV. c. 71, be materially affected by that act. When the uninterrupted enjoyment and use of it, by a person who claimed to do so as of right, for twenty years is proved, the title is *prima facie* complete; subject, however, to be defeated in any way in which it might have been defeated before the act passed, except by shewing the commencement of the usage within the time of legal memory. But, where the right has been so exercised for forty years, the title will be held

absolute and indefeasible, unless the enjoyment has been by virtue of a written consent, or agreement, which can be produced to prove the fact. (*Vid. Fowler on Church Pews.*)

Subject to these private rights, it is the duty of churchwardens, as observed before, to make all the seats of the church as available as they can for the accommodation of the parishioners, having regard, in the arrangement, to their respective stations and conditions. To enable the churchwardens to accomplish this, they may place or displace at pleasure, taking care not to exercise such power unnecessarily or capriciously. If any one, however, feel aggrieved by the conduct of the churchwardens, he may cite them to shew cause, in the Ecclesiastical Court, why they have so seated him or omitted to seat him.

OF A POSSESSORY RIGHT TO A SITTING, ETC.

When a person has been placed in a particular seat by the churchwardens, or been suffered for some time to occupy a sitting quietly, he is said to have a *possessory* right in it: but he is liable to be displaced by the churchwardens, when occasion shall require, with the sanction of the ordinary; for as he sat there originally

by their leave, express or implied, they may revoke such leave and displace him whenever the demand for church accommodation requires them to exercise the power.

The erection of a seat by an individual at his own charge—even with the leave of the minister, churchwardens, and parishioners—gives him no permanent interest in it; such an interest can only be obtained by a faculty.

Churchwardens must not permit seats to be altered in size or form, or the sides thereof to be raised to an improper height, at the mere pleasure of individuals; nor are they, on any account, to allow open sittings to be converted into close pews, without the consent of the ordinary.

Where there is a pew appurtenant to the house of an individual who lets his house and leaves the parish, he cannot covenant with his tenant that he shall not occupy it in order that he may let the pew to another. This, says Lord Stowell, is clearly illegal. If a pew is rightly appurtenant, the occupancy of it must pass with the house; and the individuals cannot, by contract between themselves, defeat the general right of the parish.

CHAPTER VII.

*On their duties with respect to their Accounts,
Sequestrations, and Presentments.*

AS TO THEIR ACCOUNTS.

By the 89th Canon, churchwardens shall, at the end of their year of office or within a month after at the most, render before the minister and parishioners a full account of all the money they may have received, and particularly of all they have expended, in reparations and otherwise, for the use of the church. The vestry must be duly summoned for this purpose, and their accounts submitted to all who are interested and have a right to attend and see how the money, raised for the worship of God and the preservation of His sanctuary, has been expended. If their accounts are allowed, they ought to be entered in the church book of accounts which every parish ought to have for this purpose; and those who allow the account are then to set their hands to it. If there be any money

remaining over, the old churchwardens are to deliver it with the said book of accounts to the succeeding churchwardens to be put by them to the account of the next year.

If the custom of the parish be for a certain number of persons to have the government thereof, and the churchwardens' account be given to them, the custom is good and the account so rendered is considered a good account.

At the time the churchwardens pass their accounts, they ought also to give an account of the church goods, committed to their charge and custody, which ought then to be called over and examined before the vestry, and delivered over to their successors.

If old churchwardens refuse to produce their account, they may be presented, for this breach of duty, by the new churchwardens at the next visitation: or any parishioner that is interested may by process call them to account before the ordinary; or the succeeding churchwardens may have an action against them for the church goods, or for any damage done to the parish contrary to their trust.

If proceedings be taken against the churchwardens in the spiritual court to compel them to exhibit their account, they must do it upon

oath : which oath will be held sufficient with regard to all items, in their account, under forty shillings, unless there be some suspicion of unfairness ; but the payment of any larger sums should be verified by receipts and, if required, by witnesses.

If vexatious proceedings be adopted towards churchwardens respecting their accounts, the Court will give them their costs.

If churchwardens be put to any expence in enforcing a church-rate, they will be entitled to be indemnified, as indeed in every case wherein they incur expence in the due and necessary discharge of their duty to the parishioners.

One churchwarden cannot pledge the credit of others for repairs without their knowledge ; but the individual giving the order becomes personally liable.

ON SEQUESTRATIONS.

In the case of a vacancy occurring by the death of a minister, or otherwise, the churchwardens are without delay to apprise the ordinary. If the sequestration is directed from the bishop to them (which is usual), they are then to take the benefice under their care, and are to manage the profits and expenses of it to the best of their

judgment and skill: and they are to discharge all the burdens of the living while in their trust; and principally they are to take care that during the vacancy the church be well and duly served by such a curate as the bishop* shall approve, whom they are to pay out of the profits of the benefice. And this trust is to continue till it be superseded by the institution of the new incumbent, to whom they are to account for all the profits of the benefice during the vacancy. If he be satisfied with their account the matter is concluded; but, if he think they have not acted as faithful stewards, he may bring them before the ordinary, by whom all things relating to the dispute are to be examined and settled.

ON VISITATIONS AND PRESENTMENTS.

The churchwardens are obliged to attend the visitation of the bishop or other ordinary, and to make their presentments according to the articles given to them for that purpose. These articles point out the subject-matter of their

* It was decided in the Court of Exchequer—*Dakins, Clerk, v. Seaman, Clerk*—that, as the appointment by the churchwardens of a clergyman upon a vacancy was quite temporary, it was not necessary that he should have the Bishop's licence.

presentments in so plain a manner as to render any explanation of their duty in this respect unnecessary.

In case the churchwardens *omit* to present any of those particulars of which there is a common fame in the parish, they may be forced to do it by the ordinary at his visitation; and, if they *refuse* to do so, may be proceeded against as wilful breakers of their oath (now declaration).

Where it is intended to give effect to any moral presentment by a prosecution, it is recommended to the churchwardens, indeed the law is said to require it, that a majority of the vestry should sanction and support them : and it is not, perhaps, unreasonable to expect that such support will be given where the scandal is great and occasioned by parties still residing in the parish.

CHAPTER VIII.

On some other matters connected with their Office.

ON THEIR POWER TO DISPOSE OF THE GOODS
OF THE CHURCH, ETC.

A QUESTION is sometimes asked by churchwardens, as to their power of disposing of church goods ; for instance — whether they have the power to dispose of an old bell and apply the money towards repairs, or sell the old communion plate and buy new. Their powers in this respect have been well and clearly defined, and are described as follows. As the churchwardens are a corporate body, and for the benefit of the parish and not to the prejudice of it, they cannot dispose of any of the church goods without the consent of the parish and the licence of the ordinary ; not without the consent of the parish, because they are the goods of the parish—and not without the licence of the ordinary, because they appertain to holy things of which he hath the care and ordering : and therefore, if the churchwardens would sell an old bell towards

other repairs, or put off old communion plate to buy new, or dispose of any other of the goods of the church although to the use of the parish, they cannot do it without the consent of the parish, and the licence of the ordinary as aforesaid ;—and the disposal of any of the said goods without the consent of the parish is void in law; for the parishioners are the proper owners of them, and the churchwardens are only intrusted with their custody, for the use of the said parishioners. However, in this case, the parishioners themselves can have no action for such goods thus disposed of—either against the receivers, to recover them, or churchwardens for disposing of them; for, although the goods belong to the parishioners in common, yet not they, but the churchwardens, are the corporation in whom they are vested for their use: and therefore, when there is cause for any such action, they must wait till they have new churchwardens, and in their name bring the suit, who have a right to call their predecessors to an account before the ordinary—and also to commence a suit against them for any such waste made by them of the church goods as aforesaid, or for any other damage done the parish contrary to the trust invested in them.

Again, the churchwardens have no power to deface or demolish anything in the church. But, if there should be anything put up in the church which may give just cause of offence, or anything which may be an hinderance to the due performing of any of the divine offices, or be inconvenient to the parishioners in their attending upon them, the licence of the ordinary must be first had before they can be legally removed; but, that authority having been obtained for their removal, the churchwardens would then be fully justified in putting it into execution : for, the original intent of the church being the worship of Almighty God, nothing is to be permitted there which shall in any way obstruct it; and, of what is or is not so, the ordinary is the sole judge.

AS TO RIGHTS OF BURIAL.

Doubts are entertained by some churchwardens, whether, as representatives of the parishioners, they have not a right to refuse burial, in the churchyard, to a non-parishioner : It may be useful, perhaps, to state what the law is, as regards the rights of burial. By the custom of England every person (except those who are denied Christian burial) may at this day be

buried, in the churchyard of the parish where he dies, without paying anything for breaking the soil: and, if the minister should refuse his permission, it may be enforced by a *mandamus*. He may also, in such a case, be punished by criminal information or indictment, by reason of the *temporal* inconvenience arising from the non-interment of the dead. But there is no custom for a parishioner to bury his dead relations, in the churchyard, as near their ancestors as possible: nor will a *mandamus* be granted to bury a corpse in a vault, or in any particular part of a churchyard. The choice of the place rests with the minister, and he and the churchwardens may exercise a discretion on the subject.

As to a non-parishioner, he has no right to be buried in a particular churchyard; and, if his relations be desirous of burying him there, his executors must pay for that privilege, and comply with the customs of that particular parish where they wish him to be interred.

As the churchyard is the common burying-place of the parishioners, and as their parochial right of burial might be invaded by the frequent interment of strangers, they are the persons interested in excluding them; and the consent of

the churchwardens (as their representatives) has therefore been thought necessary as well perhaps as that of the incumbent whose soil is broken. The churchwardens of Harrow-on-the-Hill were admonished, we find, for permitting strangers to be buried in their churchyard. But churchwardens of themselves have no absolute right to give permission ; and if the parishioners object to the burial of strangers in their churchyard they may put a stop to it, although the minister and churchwardens should be willing to continue it.

ON THE POWER OF CHURCHWARDENS TO INTERFERE IN THE CHURCH SERVICE.

Generally speaking, the duties of churchwardens, as shewn before, are confined to the custody and care of the ecclesiastical property of the parish, over which they exercise a discretionary power for specific purposes. In all other respects their office is one of observation and complaint, but not of control, with respect to divine worship—so it is laid down in one of the best dissertations on the office of churchwardens and in the Canons of 1571. In these it is observed that churchwardens are appointed to provide the furniture of the church, the bread

and wine for the holy sacraments, the surplice and the books necessary for the performance of divine worship, and such as are directed by law; but it is the minister who is to use them. If indeed he errs in this respect, it is a just matter of complaint to which the churchwardens are obliged to attend; but the law would not oblige them to complain, if they had power to redress the abuse. In the service the churchwardens have nothing to do but to collect the alms at the offertory; and they may by authority of the 50th Canon (1603) refuse the admission of strange preachers into the pulpit. But if letters of orders are produced their authority ceases. So, if the minister is guilty of any neglect or misconduct or introduces any irregularity into the service, they may complain to the ordinary, but they have no authority themselves to interfere. There may be cases where they are bound to interpose; in such they may repress, and ought to repress, indecent interruption of the service by others, and are the most proper persons to repress them, and they desert their duty if they do not. And if a case could be imagined in which the minister himself was guilty of any act grossly offensive, either from natural infirmity or from disorderly habits, not only might

the churchwardens, but even private persons, interpose to preserve the decorum of public worship. But such must be a case of instant necessity—one that supersedes all ordinary rules. In cases which fall short of such a pressure, and can wait the remedy of a proper legal complaint, that is the correct mode to be pursued by churchwardens, if private application to the minister himself shall have failed in preventing what they deem the repetition of an irregularity.

ON THEIR DUTY AS RESPECTS THE PROVISION
OF SACRAMENTAL BREAD AND WINE AND
OFFERTORY MONEY.

Doubts are entertained by some churchwardens if they can diminish the *customary* allowance of wine at sacraments. These doubts deserve to be removed. What is required of churchwardens in this respect is to provide a *sufficiency* of bread and wine for each communion. The quantity is in no degree dependent upon custom: the Canons and Rubric require a *sufficiency* to be in readiness, be the number of the communicants in a parish few or many, but they require no more. By the words "if any of the bread and wine remain unconsecrated" we are to understand *accidentally* remain un-

consecrated: this the minister is to have to his own use; but no additional and specific provision is to be made in contemplation of such contingent and ultimate disposal of it.

Differences have arisen as to the disposition of the money collected at the offertory. The Rubric, however, is plain and express:—"The money given at the offertory shall be disposed of to such pious and charitable uses, as the minister and churchwardens shall think fit: wherein if they disagree, it shall be disposed of as the ordinary shall appoint."*

ON THE CHURCH BELLS.

Although the churchwardens may concur in directing the ringing or tolling of the bells† on

* I am aware the Rubric speaks as if the money so collected were to be disposed of *after divine service ended*. These words seem to intimate an immediate disposal, unless there should be a disagreement between the minister and churchwardens. The practice, however, is otherwise. An immediate disposal would in most cases be unsatisfactory.

† The bells ought not to be rung at elections, or on any occasion of a merely political or party character. The church is, in all countries, what it is called in some "The House of Peace": and I concur in the sentiment that its sweet bells ought not to be made to sound harshly in the ears of any one, though he should be wrong and others right.

certain public and private occasions, the incumbent nevertheless has so far the control over the bells of the church that he may prevent the churchwardens from ringing or tolling them at undue hours and without just cause. Indeed, as the freehold of the church is vested in the incumbent, there is no doubt that he has a right to the custody of the keys of the church, subject to the granting admission to the churchwardens for all purposes connected with the due execution of their office. It has been stated that there is no judicial decision directly bearing upon this point, but that the preceding view of this subject is only in accordance with the opinions given by several eminent civilians. The exclusive right, however, of the minister to the custody of the key of the church is clearly laid down by Sir J. Nicholl, in *Lee v. Matthews*. "The minister has, in the first instance, the right to the possession of the key, and the churchwardens have only the custody of the church under him. If the minister refuses access to the church on fitting occasions, he will be set right on application and complaint to higher authorities." It is the duty of the churchwardens to provide proper persons for ringers and to keep them in due order. Liquor

and fires ought to be forbidden in every belfry.

PARISH CLERK.

By the 91st Canon (1603) it is ordained, "That no parish clerk, upon any vacation, shall be chosen but by the minister of the place" : and it seems most fit that the appointment should rest with him,—the duties of the office itself almost entirely consisting in the subordinate assistance given by the clerk to the minister in the discharge of his spiritual duties.

But, as the Canon cannot prevail against a custom, the right of nominating the parish clerk still continues to be a matter of frequent dispute between the minister and parishioners : and we may now consider that the matter rests on precisely the same grounds as we have already seen in the case of election of churchwardens, namely, that, where no custom can be clearly proved to the contrary, the nomination shall be according to the Canon ; but that, if a custom can be clearly established, the Canon shall not prevail against it, for no Canon can repeal or alter a custom.

The principal difficulty in the law, as to parish clerks, has arisen, not as to the manner of their election (since that appears clearly de-

fined as above stated), but as to the power of depriving them of the office. It is now, however, clearly settled. The 7 and 8 Vict. c. 59 provides a simple remedy for cases which had not unfrequently before the passing of that act occasioned some embarrassment and scandal. It enacts that when any parish clerk has been guilty of any wilful neglect or misbehaviour in his office, or that by reason of any misconduct he is an unfit and improper person to hold or exercise the same, upon complaint made to the Archdeacon or other ecclesiastical ordinary, he is empowered to summon such parish clerk before him and to examine witnesses on oath as to his alleged misconduct or incapacity, to hear and determine the truth of the charges, and if need be to suspend or remove the offender. It is to this part of the act to which the attention of churchwardens ought to be drawn. While parish clerks are often, and as they should always be, amongst the best conducted members of a flock, instances have occasionally occurred in which, from an unworthiness of character and conduct, they have proved a scandal to the church. But this scandal, when it exists, churchwardens will be bound officially to notice; and under the act now mentioned, if the offence

is capable of proof, the dismissal of the offender, from the office he disgraces, is now of easy and certain attainment.

SEXTON.

The sexton is an officer of the parish, appointed for the assistance of the churchwardens in the care of the church.

By the general law the right to appoint the sexton is in the minister of the parish, but it may be, and frequently is, by custom vested in the parishioners.

His business is to keep the church and pews cleanly swept and sufficiently dried : to make graves and open the vaults for the burial of the dead : to provide, under the directions of the churchwardens, candles &c. for the use of the church, bread and wine for the communion, and water for baptism : to attend the church during divine service, in order to open the pew doors for the parishioners, to prevent disturbances, &c.

The power of suspension and removal conferred upon the ordinary by the 7 and 8 Vict. c. 59 is confined to the case of parish clerks : it is much to be regretted that it was not made to apply also to the case of parish sextons.

SINGERS.

Some churchwardens suppose that the *direction* of the singers is under their control, when expence is incurred for this object by the parish : but this is not so. The churchwardens have no such control : that rests with the minister. He, however, one may suppose would at all times gratefully receive the assistance of the churchwardens in the management of persons who are too apt to cause difficulty and trouble.

MONUMENTS, ETC.

As much ignorance seems to prevail amongst churchwardens upon the law relating to monuments and tombstones, it may be desirable to state here how far their duties are connected with their proper preservation, &c.

Concerning the erection of monuments or tombs for the dead in the church or churchyard it is, says Coke, in a convenient manner lawful ; for it is the last work of charity that can be done for the deceased, who whilst he lived was a lively temple of the Holy Ghost, with a reverend regard and Christian hope of a joyful resurrection (3 Inst. 102). This dictum must be understood under certain conditions only ; for Lord Stowell

says "there can be no question as to this, that no monument can be erected without the leave of the ordinary. It is to his care that the fabric of the church has been committed; and it is not to be defaced at the caprice of individuals." It is also stated in the books that the consent of the Incumbent is necessary to the erection of monuments. This, however, must be considered as doubtful, excepting perhaps in the chancel. But there is no doubt that a custom for the churchwardens to set up monuments, &c., without consent of the ordinary or incumbent is a bad custom. Nor can the churchwardens give leave for the erection of gravestones &c. But, when a monument has been once erected, it may be repaired and kept in proper order without any fresh consent of the ordinary or incumbent: it may be proper to apply to churchwardens for leave to do so; but this appears a mere formal act, for the churchwardens would have no power to refuse such consent. And indeed it appears to be their duty to encourage the keeping of them in good repair; in which they are supposed to have such an interest as to enable them to bring an action for defacing any monument—an act which is in itself an ecclesiastical offence: and it is also an offence at

common law, and those who build or erect the monument might equally with the churchwardens maintain during their lives an action against one who defaces them; and, after their decease, the heir of him to whose memory the monument is set up could maintain such an action. And this is stated to be an action of trespass.

The word "ordinary" frequently occurs in this treatise, and may require explanation. It means, strictly, one who has the proper and regular jurisdiction, as of common right, in opposition to one who has an extraordinary appointment. The Bishop is called the "*ordinary*," as having ordinary jurisdiction in all ecclesiastical causes and matters in his diocese. But the word "ordinary" has a more general signification and may mean the Archdeacon, or any other official person, who, though he may, in the first instance, have derived his authority from episcopal delegation, has now of common right or usage acquired a proper, regular, and substantial jurisdiction of his own.



